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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE ALBERTO QUINTANILLA,

Defendant and Appellant.

2d Crim. No. B233616
(Super. Ct. No. LA007927)
(Los Angeles County)

Jorge Alberto Quintanilla appeals an order denying his motion under Penal Code section 1016.5¹ to vacate the judgment entered against him in 1992 following his no contest plea to forcible rape. (§ 261, subd. (a)(2).) Because Quintanilla did not obtain a certificate of probable cause, we dismiss the appeal. (*People v. Placencia* (2011) 194 Cal.App.4th 489, 494-495 (*Placencia*).)

FACTUAL AND PROCEDURAL HISTORY

Quintanilla is a native of El Salvador. He came to the United States in 1976 and became a legal permanent resident in 1982. In 1991, he was charged with four counts of forcible rape after his step-daughter accused him of sexually abusing her over a period of six years. (§ 261, subd. (a)(2).) He had no prior criminal record.

¹ All statutory references are to the Penal Code.

In 1992, he pled guilty to one count of forcible rape in exchange for a six-year prison term and dismissal of the remaining counts. In 2005, the Department of Homeland Security placed Quintanilla under removal proceedings. In 2007, the trial court issued to Quintanilla a certificate of rehabilitation, restoring his rights of citizenship. (§ 4852.13.) In 2010, the immigration judge suggested to Quintanilla that he should seek to have his conviction set aside, according to Quintanilla's immigration attorney.

In 2011, Quintanilla moved the trial court to vacate judgment pursuant to section 1016.5, subd. (b) on the grounds that he was "not given any advisement" at his 1992 hearing, and his counsel rendered ineffective assistance of counsel. The trial court denied the motion. The 1992 reporter's transcript of the plea hearing demonstrated that the prosecutor advised Quintanilla, "if you are not a citizen of this country this could result in your deportation, denial of naturalization, denial of reentry, denial of a work permit or effect any claim you have for amnesty." The trial court rejected Quintanilla's contention that the word "could" rendered the advisement insufficient when deportation was a nearly certain consequence of Quintanilla's plea.

Quintanilla filed a notice of appeal from the order. He did not request a certificate of probable cause.

DISCUSSION

We do not address the merits of Quintanilla's claim because he did not obtain a certificate of probable cause. (*Placencia, supra*, 194 Cal.App.4th at pp. 494-495.)² "[A] section 1016.5 motion follows a claimed failure by the trial court to advise the defendant of the immigration consequences of a plea of guilty or nolo

² The question whether a defendant must obtain a certificate of probable cause in order to appeal the denial of a motion to withdraw a guilty plea for failure by the court or counsel to advise the defendant of the immigration consequences of the plea in accordance with section 1016.5 is presently pending before the California Supreme Court. (*People v. Arriaga*, review granted Feb. 22, 2012, S199339.)

contendere which necessarily precedes the entry of the plea and affects the validity of the plea." (*Id.* at p. 494.) The appeal must be dismissed.

DISPOSITION

The appeal is dismissed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Darlene E. Schempp, Judge
Superior Court County of Los Angeles

Simone & Roos, Martin Simone, for Defendant and Respondent.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, Zee Rodriguez, Deputy Attorney General, for Plaintiff and Respondent.